

PT 95-7

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

ADMINISTRATIVE HEARINGS DIVISION
101 West Jefferson St., 5-500
Springfield, Illinois 62794
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HABITAT FOR HUMANITY OF      )   Docket No.(s)  93-45-72
NORTHERN FOX VALLEY          )   Pin No.(s)   06-24-455-008
                              )   06-24-455-009
                              )   06-24-455-010
                              )   06-24-455-011
                              )   and
                              )   06-24-455-014
                              )   (Kane County)
                              )
      Applicant              )
                              )
v.                            )
                              )
                              )
                              )
THE DEPARTMENT OF REVENUE     )
OF THE STATE OF ILLINOIS      )   George H. Nafziger
                              )   Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

APPEARANCES Mr. Henry Repay, the attorney for Applicant, appeared on behalf of Applicant.

SYNOPSIS The hearing in this matter was held on November 23, 1994, at 100 West Randolph Street, Chicago, Illinois, to determine whether or not Kane County parcels numbered 06-24-455-008, -009, -010, -011, and -014, should be exempt from real estate taxes for the 1993 assessment year.

Did Applicant own the parcels here in issue during the 1993 assessment year? Is Applicant a charitable organization? Did Applicant use the parcels here in issue for charitable purposes during 1993? Following the submission of all the evidence and a review of the record in this matter, it is determined that Applicant is a charitable organization, and that it owned the parcels here in issue from and after July 22, 1993. It is further determined that while Kane County parcels numbered 06-24-455-010

and 06-24-455-011, were in the process of adaptation for exempt use during the period July 22, 1993, through December 31, 1993, Kane County parcels numbered 06-24-455-008, 06-24-455-009, and 06-24-455-014, were vacant and not used for any purpose during the period July 22, 1993, through December 31, 1993.

FINDINGS OF FACT The Department's position in this matter, namely that Kane County parcels numbered 06-24-455-010 and 06-24-455-011 should be exempt from real estate tax for 39% of the 1993 assessment year, and that Kane County parcels numbered 06-24-455-008, 06-24-455-009, and 06-24-455-014 should remain taxable, was established by the admission in evidence of Department's Exhibits 1 through 6C.

Mr. Eary Isibue, Jr., a board member of Applicant, was present, and testified on behalf of Applicant.

On October 21, 1993, the Kane County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning the parcels here in issue for the 1993 assessment year to the Illinois Department of Revenue (Department's Exhibit 2). On August 4, 1994, the Department approved the exemption of Kane County parcels numbered 06-24-455-010 and 06-24-455-011 for 39% of the 1993 assessment year, and denied the exemption of Kane County parcels numbered 06-24-455-008, 06-24-455-009, and 06-24-455-014 (Department's Exhibit 3). By a letter dated August 23, 1994, Applicant's attorney requested a formal hearing in this matter (Department's Exhibit 4). The hearing held on November 23, 1994, was held pursuant to that request.

Applicant was incorporated, pursuant to the "General Not For Profit Corporation Act of Illinois", on July 31, 1990, for the following purposes:

"The corporation is organized exclusively for charitable, educational, religious, or scientific purposes, within the meaning of section 501(c)(3) of the Internal Revenue Code."

On May 13, 1991, the purpose clause of the Articles of Incorporation

of Applicant were amended to read in part as follows:

"To witness to and implement the Gospel of Jesus Christ in Illinois and throughout the United States and the world by working with economically disadvantaged people to help them create a better human habitat in which to live and work;...."

I take Administrative Notice of the fact that in Docket Nos. 91-45-144 and 92-45-105, the Director of Revenue on February 2, 1994, determined that Applicant was a charitable organization.

Applicant purchases property and constructs homes thereon, using volunteer labor and donated materials where available. Applicant then sells the finished homes to persons or families who are economically disadvantaged, and who are in need of housing. These persons must be persons who can follow through, and buy the home. That is, they must have an employment record, be relatively debt-free, and able to make the payments on a home. Applicant then sells the home to such persons or families, and takes a note and mortgage to secure the payment of the full purchase price. The purchase price consists of Applicant's cost to acquire the lot plus Applicant's cost to construct the house. Applicant does not charge interest on the note or mortgage. As a purchaser pays off their loan, Applicant then uses that money to finance another project.

The City of Elgin conveyed the parcels here in issue to Applicant by a quitclaim deed, dated July 22, 1993. These parcels had previously contained a City of Elgin water retention pond, and related facilities. After the City decided to abandon this facility, it then buried its water retention facilities in place and filled over them, and then gave these parcels to Applicant.

Within 30 days after acquiring these parcels. Applicant constructed a foundation on Kane County parcels numbered 06-24-455-010 and 06-24-455-011, and proceeded to move the house which had been framed by its volunteers, using lumber donated by Seigle Building Supply on Seigle's parking lot, on to the aforesaid parcels. Applicant then proceeded in a timely manner,

using volunteer labor and some donated material, and completed this house about the end of June 1994. Ms. Patricia Valvis, a single mother, and her two daughters, moved into this house on July 2, 1994.

With regard to the remaining three parcels, no evidence or testimony was offered in evidence, concerning activity either on said parcels, or concerning said parcels from July 22, 1993, until March 24, 1994. Applicant apparently first had a question about building on these three lots, because some of the city's facilities had been sunk in place on said lots. After the first house was started, Applicant was also concerned about complying with the Plat Act, with regard to the remaining lots. Building permits for two houses on said three lots were issued on July 24, 1994. From July 24, 1994, through October 3, 1994, construction proceeded on those two houses. Applicant then ran out of funds to complete those houses on October 3, 1994. Applicant hopes to complete those houses during 1995. Said houses were not completed as of the date of the hearing in this matter.

1. Based on the foregoing, I find that Applicant is a charitable organization.

2. I further find that Applicant acquired the parcels here in issue by a quitclaim deed, dated July 22, 1993.

3. I also find that Applicant immediately proceeded to adapt Kane County parcels numbered 06-24-455-010 and 06-24-455-011, for exempt use.

4. Finally, I find that Kane County parcels 06-24-455-008, 06-24-455-009, and 06-24-455-014 remained vacant and unused from July 22, 1993, through December 31, 1993.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

Illinois Courts have held property to be exempt from tax where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971); *People ex rel. Pearsall v. Catholic Bishop of Chicago*, 311 Ill. 11 (1924); *In re Application of County Collector*, 48 Ill.App.3d 572 (1977); and *Weslin Properties, Inc. v. Department of Revenue*, 157 Ill.App.3d 580 (1987).

In the case of *Weslin Properties, Inc. v. Department of Revenue*, 157 Ill.App.3d 580 (1987), *Weslin Properties, Inc.* purchased a 24.3-acre tract to be developed into an Urgent Care Center, hospital and related medical facilities, on May 26, 1983. During 1984, construction on the Urgent Care facility began. During 1983, *Weslin Properties, Inc.* approved a site plan, and hired an architect. During 1985, the Urgent Care Center was completed

and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983, but that the remainder of said parcel did not qualify, as there had not been sufficient adaptation and development for use of the remainder of said parcel during 1983. In this case, within thirty days after acquiring the parcels here in issue, Applicant began work on the house to be located on Kane County parcels numbered 06-24-455-010 and 06-24-455-011 and proceeded in a timely manner to complete that house. Said house was occupied on July 2, 1994. I therefore conclude that Kane County parcels numbered 06-24-455- 010 and 06-24-455-011, qualified for exemption during the period July 22, 1993, through December 31, 1993. Since Kane County parcels 06-24-455-008, 06-24-455-009, and 06-24-455-014 remained vacant, with no activity having taken place on said lots from July 22, 1993, through December 31, 1993, in view of the Court's decision in the Weslin case, concerning the property other than the Urgent Care Center, as well as the decisions in the cases of *People ex rel. Pearsall v. The Catholic Bishop of Chicago*, 311 Ill. 11 (1924), and *Antioch Missionary Baptist Church v. Rosewell*, 119 Ill.App.3d 981 (1983), I conclude that said parcels did not qualify for exemption during the period July 22, 1993, through December 31, 1993.

In the case of *People ex rel. Pearsall v. The Catholic Bishop of Chicago*, 311 Ill. 11 (1924), the Illinois Supreme Court had held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

In the case of *Antioch Missionary Baptist Church v. Rosewell*, 119 Ill.App.3d 981 (1983), the Court held that property which was vacant and not used for any purpose, did not qualify for the statutory exemption as property used exclusively for exempt purposes.

I therefore recommend that Kane County parcels numbered 06-24-455-010

and 06-24-455-011, be exempt from real estate tax for 45% of the 1993 assessment year.

I further recommend that Kane County parcels 06-24-455-008, 06-24-455-009, and 06-24-455-014 be placed back on the tax rolls for 45% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995